

2 H. & G. 120. By sec. 165,²¹ the Orphans Court may, if it deem it advantageous to the infant, allow the guardian to exceed the income of the estate, and to make use of the principal and sell part of the same under its order, but no part of the real estate shall be diminished on account of the maintenance and education of the infant, without the approbation of a Court of equity as well as of the Orphans Court. Allowances by the Orphans Court for the maintenance and education of the infant are, however, not considered conclusive, *Spedden v. the State*, 3 H. & J. 251.

Leases by guardians.—In *Roe v. Hodgson*, 2 Wils. 129, the Court doubted whether a lease for twenty-one years, made by a testamentary guardian of an infant, was void or only voidable from the beginning, though beyond the period of infancy it was held clearly void. In *Magruder v. Peter*, 4 G. & J. 323, it was held that guardians, who have the lands of infants intrusted to them, may make leases to try title, but this privilege is not extended to those guardians to whom belongs the custody alone of infants; and in all cases where a plaintiff in ejectment relies on a lease made by a guardian, it is necessary for him to prove at the trial the legal appointment of the guardian, and that the ward was under age when the lease was made. By sec. 161 of Art. 93,²² the guardian may lease the real estate of the infant from year to year, or for any term not exceeding three years, and within the non-age of his ward. Leaseholds belonging to the infant may also be assigned or sub-leased, under the direction of the Orphans Court, by the Act of 1868, ch. 380.²³ But, as a lease by guardian in socage is good until the infant attain fourteen, *Wade v. Baker*, 1 Ld. Raym. 131, it would seem that a lease by a testamentary guardian during the minority of the ward ought to be good also, the interest of both guardians being the same.

Sales by guardians.—An important limitation of the powers of guardians in respect of the property of their wards is contained in the Code, Art. 93, sec. 173,²⁴ which provides, that no guardian shall sell any property of his ward without an order of the Orphans Court approving his bond first had, and any sale without an order of Court first had shall be void, &c., and the guardianship may be revoked, as to which see *Mayor, &c. v. Norman*, 4 Md. 352; Art. 93, sec. 237;²⁵ *Carlyle v. Carlyle*, 10 Md. 440; *Sullivan v.*

²¹ Code 1911, Art. 93, sec. 165; *Kopp v. Herrman*, 82 Md. 349.

Under the Act of 1890, ch. 570, the Orphans Courts have power to order a conveyance by a guardian of a ground rent which is owned by his ward and which has become redeemable, to the owner of the leasehold interest. Code 1911, Art. 93, sec. 171.

²² Code 1911, Art. 93, sec. 161.

²³ Code 1911, Art. 93, sec. 167.

²⁴ Code 1911, Art. 93, sec. 174; *Baldwin v. State*, 89 Md. 601; 179 U. S. 220; *Macgill v. McEvoy*, 85 Md. 298.

A guardian as such has no authority to mortgage his ward's property; nor in general does a power of sale include a power to mortgage. *Tyson v. Latrobe*, 42 Md. 325; *Wilson v. Ins. Co.*, 60 Md. 150.

²⁵ Code 1911, Art. 93, sec. 242. As to investments by guardians, see *Forrester v. State*, 46 Md. 164; *Hartsock v. Russell*, 52 Md. 619; *Skinner v. Gaither*, 87 Md. 330; *Fidelity Co. v. Freud*, 115 Md.—.